

**AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF ARIZONA**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Fund for Empowerment, a nonprofit  
corporation, in its individual capacity;  
Faith Kearns, individually; and,  
Frank Urban, individually,

Plaintiffs,

vs.

City of Phoenix, a political subdivision of  
the state of Arizona; Chief Jeri Williams, in  
her official capacity; Interim Chief Michael  
Sullivan, in his official capacity; Entities I-  
X, political subdivisions of the state of  
Arizona; and, Officers John and Jane Does  
1-75, in their individual capacities,

Defendants.

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No. CV-22-02041-PHX-GMS

**JOINT PRE-HEARING  
STATEMENT**

Pursuant to the Court's order setting Preliminary Injunction hearing dated December 2, 2022 (Doc. 7), the parties, through undersigned counsel, respectfully submit this Joint Pre-Hearing Statement. Each party hereby acknowledges that, by signing this joint pre-hearing statement, any objections not specifically raised herein are waived. The parties do not waive any objections for purposes of future litigation.

**A. COUNSEL FOR THE PARTIES**

**Plaintiffs:**

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1                   **B.     WITNESSES**

2                   **Plaintiffs:**

- 3                   1.     Elizabeth Venable  
4                             Fund for Empowerment  
5                             C/o American Civil Liberties Union of Arizona

6                   Elizabeth Venable is the co-founder and current lead organizer of the Plaintiff, Fund  
7                   for Empowerment. Ms. Venable will testify the Fund for Empowerment is a non-profit  
8                   organization whose mission is to build community resources for members of the unsheltered  
9                   community. Ms. Venable will further testify as consistent with the organization's  
10                  description in the Complaint. *See* Ms. Venable's declaration (Doc. 2-1, pp. 10-12).

- 11                  2.     Faith Kearns  
12                             C/o American Civil Liberties Union of Arizona

13                  Faith Kearns is a chronically, unsheltered individual who resides in Maricopa  
14                  County, Arizona. Ms. Kearns will testify regarding the raids performed by the Phoenix  
15                  Police Department which have resulted in the destruction of her personal property. *See* Ms.  
16                  Kearns' declaration (Doc. 2-1, pp. 2-4).

- 17                  3.     Frank Urban  
18                             C/o American Civil Liberties Union of Arizona

19                  Frank Urban is a chronically, unsheltered individual who resides in Maricopa  
20                  County, Arizona. Mr. Urban will testify regarding the raids performed by the Phoenix  
21                  Police Department which have resulted in his receiving criminal citations for trespassing  
22                  and have resulted in the destruction of his personal property. *See* Mr. Urban's declaration  
23                  (Doc. 2-1, pp. 6-8).

- 24                  4.     Eric Daniel Brickley  
25                             C/o American Civil Liberties Union of Arizona

26                  Eric Daniel Brickley is a veteran who formerly served in the United States Army for  
27                  five years including tours in Iraq and Afghanistan. Mr. Brickley left the service at the rank  
28

1 of Sergeant. He will testify he volunteers for Feed Phoenix, a local non-profit organization  
2 focusing on ending food and hunger insecurity in Phoenix. In this capacity he interacts  
3 regularly with individuals in the unsheltered community. He will further testify he has  
4 personally seen the Phoenix City Police and other city employees arrest and conduct sweeps  
5 against the unsheltered community. *See* Mr. Brickely's declaration (Doc. 2-1, pp.14-16).

6  
7 5. Ronnie Lee Massingille  
C/o American Civil Liberties Union of Arizona

8 Ronnie Lee Massingille is a current resident of the City of Phoenix experiencing  
9 homelessness. Mr. Massingille will testify consistent with his declaration regarding the  
10 City's raids.

11 **Defendants:**

12 1. Rachel Milne  
13 C/o Pierce Coleman PLLC

14 Rachel Milne serves as the Director of the Office of Homeless Solutions in the City  
15 of Phoenix. Ms. Milne will testify regarding the unsheltered population in the City and  
16 those located around the Human Services Campus ("HSC") downtown - the area Plaintiffs  
17 refer to as "the Zone". Ms. Milne has knowledge regarding services offered to the  
18 unsheltered, shelter bed capacity, efforts to locate housing for the unsheltered, and use of  
19 City funds to address homelessness in the City. Ms. Milne will testify regarding the City's  
20 current cleaning operations for public property and rights-of-way occupied by homeless  
21 encampments and the City's plans to conduct enhanced cleanups of the area surrounding  
22 the HSC. She will testify the City does not conduct "raids" or "sweeps" as alleged by  
23 Plaintiffs. Indeed, the City has developed a plan for retrieval, storage, and disposal of  
24 abandoned property, contrary to Plaintiffs' assertions. Ms. Milne is knowledgeable about  
25 the City's HSC Enhanced Clean Up Roles/Responsibilities and HSC Enhanced Clean Up  
26 Abandoned Property Procedure. Ms. Milne will testify that the City does not  
27 indiscriminately dispose of personal property during cleanups and provides people with  
28 time to remove belongings. Ultimately, Ms. Milne will testify regarding the City's

1 strategies for homelessness solutions and cleanups of public property consistent with her  
2 declaration, attached to the City's response to Plaintiffs' motion for preliminary injunction  
3 (Doc 18-1).

4                   2.     Scott Hall  
5                             C/o Pierce Coleman

6             Scott Hall serves as the Deputy Director of the Office of Homeless Solutions in the  
7 City of Phoenix. Mr. Hall will testify regarding the City's use of resources to address  
8 homelessness in the City including contracts with third-party providers and projects to offer  
9 housing solutions and shelter. Part of Mr. Hall's duties are to oversee and coordinate City  
10 departments cleaning streets in the area around the HSC, the area Plaintiffs refer to as "the  
11 Zone." Mr. Hall has knowledge of the City's current cleaning operations and the City's  
12 plans to conduct enhanced cleanups. Mr. Hall also has knowledge regarding the City's  
13 more thorough cleanings that occurred before January 2022 and changes in the City's new  
14 procedures for the enhanced cleanings scheduled for December 16, 2022. Mr. Hall will  
15 testify the City does not conduct "raids" or "sweeps" as alleged by Plaintiffs. In contrast to  
16 Plaintiff's claims, Mr. Hall will testify that the City has developed a plan for retrieval,  
17 storage, and disposal of abandoned property. Mr. Hall is knowledgeable about the HSC  
18 Enhanced Clean Up Abandoned Property Procedure and the HSC Enhanced Clean Up  
19 Roles/Responsibilities procedure. Mr. Hall will testify that the City does not  
20 indiscriminately dispose of personal property during cleanups and provides people  
21 reasonable time to remove belongings. Mr. Hall will testify regarding cleanup operations  
22 in the field including efforts to protect personal belongings and disposal of trash, debris,  
23 and unsanitary items. Mr. Hall will also testify that the City provides notice of the cleaning  
24 schedule, which includes installation of signage around the HSC and distribution of flyers  
25 to the public. Ultimately, Mr. Hall will testify regarding the City's strategies for  
26 homelessness solutions and cleanups of public property consistent with his declaration  
27 attached to the City's response to Plaintiffs' motion for preliminary injunction (Doc 18-2).

1  
2 3. Brian Freudenthal  
3 C/o Pierce Coleman PLLC

4 Brian Freudenthal serves as the Commander over the Downtown Operations Unit in  
5 the Central City Precinct of the City of Phoenix Police Department. Commander  
6 Freudenthal will testify regarding the City's arrests of individuals pursuant to Phoenix City  
7 Code Sections 23-30(A) and 23-48.01, as well as citations and arrests in general of the  
8 City's homeless population. Commander Freudenthal is knowledgeable regarding the  
9 Department's Crime Analysis and Research Unit ("CARU") and will testify regarding  
10 reports of arrests for the area around the HSC (called the "Zone" in Plaintiffs' complaint  
11 and identified as Grid BA26 by CARU). Commander Freudenthal will testify that the City  
12 does not conduct indiscriminate or mass arrests of persons experiencing homelessness, and  
13 will offer testimony regarding the limited arrests and bookings from 2018 to present.  
14 Commander Freudenthal will testify that in 2022, the City made zero arrests and booked  
15 zero individuals into jail pursuant to City Code Section 28-30 for Grid BA26. Similarly, in  
16 2022, the City cited zero individuals pursuant to City Code Section 23-30 for Grid BA26.  
17 Commander Freudenthal also has knowledge of the City's current cleaning operations for  
18 the area around the HSC and the City's plans to conduct enhanced cleanups starting  
19 December 16, 2022. Commander Freudenthal will testify regarding the Police  
20 Department's role in cleanings of homeless encampments and testify that the City does not  
21 conduct "raids" or "sweeps" as alleged by Plaintiffs. Ultimately, Commander Freudenthal  
22 will testify regarding the City's strategies for homelessness solutions and cleanups of public  
23 property consistent with his declaration attached to the City's response to Plaintiffs' motion  
24 for preliminary injunction (Doc 18-3).

25 4. Gina Montes  
26 C/o Pierce Coleman PLLC

27 Gina Montes serves as Deputy City Manager for the City of Phoenix. Ms. Montes  
28 will testify regarding the unsheltered population in the City and those located around the

1 HSC (or in “the Zone,” as Plaintiffs characterize it). Ms. Montes has knowledge regarding  
2 services offered to the unsheltered, shelter bed capacity, efforts to locate housing for the  
3 unsheltered, and use of City funds to address homelessness in the City of Phoenix. Ms.  
4 Montes will testify regarding the City’s current cleaning operations for public property and  
5 right-of-way occupied by homeless encampments and the City’s plans to conduct enhanced  
6 cleanups of the area surrounding the HSC. She will testify the City does not conduct “raids”  
7 or “sweeps” as alleged by Plaintiffs. Indeed, the City has developed a plan for retrieval,  
8 storage, and disposal of abandoned property contrary to Plaintiffs’ assertions. Ms. Montes  
9 is knowledgeable about the City’s HSC Enhanced Clean Up Roles/Responsibilities and  
10 HSC Enhanced Clean Up Abandoned Property Procedure. Ms. Montes will testify that the  
11 City does not indiscriminately dispose of personal property during cleanups and provides  
12 people with time to remove belongings. Ms. Montes will testify regarding her observations  
13 of City operations in the field while conducting cleanups of encampments and efforts to  
14 protect personal belongings. Ms. Montes will further testify regarding changes to City  
15 practices and procedures during the last year and the City’s efforts to investigate Plaintiffs’  
16 concerns and lack of response to City inquiries. Ultimately, Ms. Montes will testify  
17 regarding the City’s strategies for homelessness solutions and cleanups of public property  
18 consistent with her declaration attached to the City’s response to Plaintiffs’ motion for  
19 preliminary injunction (Doc 18-5).

20 Each party understands that it is responsible for ensuring that the witnesses whose  
21 testimony the party will rely on are present at the preliminary injunction hearing. The  
22 parties have waived formal subpoena requirements. Each party further understands that any  
23 witness who does not appear will have their declaration stricken from the hearing and any  
24 witness whose testimony is offered to the Court shall be listed on that party’s list of  
25 witnesses. The parties cannot rely on any witness having been listed by another party.  
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1           **C.     LIST OF EXHIBITS**

2           1.     The following exhibits are admissible in evidence and may be marked in  
3 evidence by the Clerk:

4           a.     Plaintiffs' Exhibits:

- 5                   1.     Maricopa County Ass'n of Govt's Point-in-Time Comm'n  
6                             (Exhibit 5)  
7                   2.     Screenshots of City Website re Shelter Beds (Exhibit 6)  
8                   3.     HSC Enhanced Cleanup Document (Exhibit 7)

9           b.     Defendants' Exhibits:

- 10                   1.     Declaration of Rachel Milne (Document 18-1)  
11                             i.     Attachment 1: HSC Enhanced Clean Up Abandoned  
12                                     Property Procedure  
13                   2.     Declaration of Scott Hall (Document 18-2)  
14                             i.     Attachment 1: Signage – Clean Up Notice  
15                             ii.    Attachment 2; HSC Enhanced Clean Up  
16                                     Roles/Responsibilities  
17                             iii.   Attachment 3: Flyer – Notification of Enhanced  
18                                     Cleanings  
19                   3.     Declaration of Brian Freudenthal (Document 18-3)  
20                             i.     Declaration of Custodian of Records – Karen Kontak  
21                             ii.    Attachment 1: Arrests made in Grid BA26 for Section  
22                                     23-30 or Section 23-48.01  
23                             iii.   Attachment 2: Arizona Traffic Ticket and Complaint  
24                                     ("ATTC" citations issued in Grid BA26 that contain at  
25                                     least one Charge under Section 23-30 or Section 23-  
26                                     48.01  
27                   4.     Transcript from State Court Lawsuit (*Freddy Brown v. City of*  
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Phoenix, CV 2022-010439) (Document 18-4)

5. Declaration of Gina Montes (Document 18-5)

## 6. City of Phoenix Strategies to Address Homelessness

7. As to the following exhibits, the parties have reached the following stipulations:

a. Plaintiffs' Exhibits:

Plaintiffs' Exhibits 5-7 are stipulated.

b. Defendants' Exhibits:

Defendants' Exhibits 1-6 are stipulated.

8. As to the following exhibits, the party against whom the exhibit is to be offered objects to the admission of the exhibit and offers the objection stated below:

a. Plaintiffs' Exhibits:

**1. Declaration of Ronnie Lee Massingille:**

As to the specific paragraphs in the declaration, the City files the following objections:

¶ 5. Objects on the grounds of Federal Rules of Evidence 201 and 602. The witness appears to lack personal knowledge and the Court may take judicial notice regarding basic geographic facts. None of the locations described are located in the Zone as described by Plaintiffs. For example, Sereno Park is located at 56<sup>th</sup> Street and Thunderbird approximately 17 miles from the Zone.

¶ 10. Objects on the grounds of Federal Rules of Evidence 201 and 602. The witness appears to lack personal knowledge and the Court may take judicial notice regarding basic geographic facts. The conduct the declarant claims occurred took place in Sereno Park, 17 miles from the Zone. Further objects to a lack of foundation as to why the Declarant has personal knowledge regarding the destruction of items left behind by other individuals and particularly when he purportedly left.

¶ 11. Objects on the grounds of Federal Rules of Evidence 602 and 611. The testimony is vague with regard to where and when the purported conduct occurred.

¶ 12. Objects on the grounds of Federal Rules of Evidence 602 and 611. The testimony is vague with regard to the conduct that occurred. Further, the attached photograph does not show the conduct as described by Declarant. Further, invokes Federal Rule of Evidence 1002 Best Evidence Rule because the copy of the photograph embedded in the declaration is of low resolution and does not have metadata which would presumably accompany the original of the photograph to document date and time of picture.

¶ 16. Objects on the grounds of Federal Rules of Evidence 602 and 611. The testimony is vague with regard to where and when the purported conduct occurred.

## **2. Declaration of Faith Kearns:**

The City files the following objections:

¶ 5. Objects on the grounds of Federal Rules of Evidence 201 and 602. The witness appears to lack personal knowledge and the Court may take judicial notice regarding basic geographic facts. None of the locations described are located in the Zone as described by Plaintiffs. The North Mountain Preserve is located approximately 11 miles from the Zone.

¶ 9. Objects on the grounds of Federal Rules of Evidence 611 and 802. The testimony is vague with regard to where and when it occurred. Further the officers' statements are inadmissible hearsay.

¶ 10. Objects on the grounds of Federal Rules of Evidence 611 and 802. The testimony is vague with regard to where and when it occurred. Further the officers' statements are inadmissible hearsay.

¶¶ 14 - 20. Objects on the grounds of Federal Rules of Evidence 602 and 611. The testimony is vague with regard to where and when the purported conduct occurred. Further objects under Federal Rule of Evidence 402 and 403. All of the alleged conduct occurred in 2020 or before and is not relevant to the current proceeding or is more prejudicial than probative. The City's current procedures are before the Court for examination and the Court need not review testimony from over two years ago.

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The City files the following objections:

¶ 7. Objects on the grounds of Federal Rules of Evidence 201 and 602. The witness appears to lack personal knowledge and the Court may take judicial notice regarding basic geographic facts. None of the locations described are located in the Zone as described by Plaintiffs. The North Mountain Preserve is located approximately 11 miles from the Zone.

¶ 11. Objects on the grounds of Federal Rules of Evidence 611 and 802. The testimony is vague with regard to where, when, and on how many occasions the conduct occurred. The testimony does not identify what “information” police allegedly provided, or why that information was “expired and inaccurate.” Further, the officers’ statements are inadmissible hearsay.

¶ 14. Objects on the grounds of Federal Rules of Evidence 602 and 611. The testimony is vague with regard to where and when the purported conduct occurred. Further objects under Federal Rules of Evidence 402 and 403. All of the alleged conduct occurred in 2020 or before and is not relevant to the current proceeding or is more prejudicial than probative. The City's current procedures are before the Court for examination and the Court need not review testimony from over two years ago.

¶¶ 15-21. Objects on the grounds of Federal Rules of Evidence 602 and 611. The testimony is vague with regard to where and when the purported conduct occurred. Further objects under Federal Rules of Evidence 402 and 403. All of the alleged conduct occurred in 2020 or before and is not relevant to the current proceeding or is more prejudicial than probative.

#### **4. Declaration of Elizabeth Venable:**

The City files the following objections:

¶¶ 13-15. Objects on the grounds of Federal Rules of Evidence 602 and 611. The testimony is vague with regard to where and when the purported conduct occurred. Further objects under Federal Rules of Evidence 402 and 403.

¶¶ 16-17. Objects on the grounds of Federal Rules of Evidence 602 and 611. The

1 testimony is vague with regard to where and when the purported conduct occurred, and the  
2 witness appears to lack personal knowledge. Further objects under Federal Rules of  
3 Evidence 402 and 403. Further objects under Federal Rule of Evidence 802 as these  
4 individuals' statements are inadmissible hearsay.

5 ¶¶ 19, 21. Objects on the grounds of Federal Rule of Evidence 602. The witness  
6 appears to lack personal knowledge. Further objects under Federal Rules of Evidence 402  
7 and 403. Further objects under Federal Rule of Evidence 802 as these individuals'  
8 statements are inadmissible hearsay.

9 **5. Declaration of Eric Daniel Brickley:**

10 The City files the following objections:

11 ¶ 4. Objects on the grounds of Federal Rules of Evidence 602 and 611. The testimony  
12 is vague with regard to where and when the purported "sweeps" occurred. Further objects  
13 under Federal Rules of Evidence 402 and 403.

14 ¶¶ 6-10. Objects on the grounds of Federal Rules of Evidence 602 and 611. The  
15 testimony is vague with regard to where and when the purported conduct occurred. Further  
16 objects under Federal Rules of Evidence 402 and 403.

17 ¶ 12. Objects on the grounds of Federal Rule of Evidence 602. The witness appears  
18 to lack personal knowledge. Further objects under Federal Rules of Evidence 402 and 403.  
19 Further objects under Federal Rule of Evidence 802 as these individuals' statements are  
20 inadmissible hearsay.

21 ¶¶ 13, 17-18. Objects on the grounds of Federal Rules of Evidence 602 and 611. The  
22 testimony is vague with regard to where and when the purported conduct occurred. Further  
23 objects under Federal Rule of Evidence 402 and 403.

24 **6. Defendants' Exhibits:**

25 N/A  
26  
27  
28

1 Respectfully submitted this 13th day of December.

2 AMERICAN CIVIL LIBERTIES UNION  
3 FOUNDATION OF ARIZONA

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*Attorneys for Defendants*

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2022, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for filing. Notice of this filing will be sent to all parties by operation of the Court’s electronic filing system.

/s/ Mary Walker  
Mary Walker